REMARKS

INTRODUCTION:

In accordance with the foregoing, claim 8 has been amended. No new matter is being presented, and approval and entry are respectfully requested.

Claims 1-17, and 19 are pending and under consideration. Reconsideration is requested.

REJECTION UNDER 35 U.S.C. §112:

In the Office Action, at page 2, item 3, the Examiner rejected claim 8 under 35 U.S.C. §112, first paragraph for the reasons set forth therein. The reasons for the rejection are set forth in the Office Action and therefore not repeated. Applicants traverse this rejection and respectfully request reconsideration.

Paragraphs 12 and 16 of the subject Specification disclose a heat reflecting unit that contains water therein to prevent materials dropping from the food from being burned.

Nevertheless, Applicants have removed the phrase "cooled by the water" from claim 8, thereby broadening claim 8.

Accordingly, Applicants respectfully submit that the Examiner's rejection is overcome.

REJECTIONS UNDER 35 U.S.C. §103:

In the Office Action, at page 3, item 6, the Examiner rejected claims 1-6 and 9-17 under 35 U.S.C. §103(a) as being unpatentable over Perkins (U.S. Patent No. 4,508,024 – hereinafter Perkins) in view of Hedgpeth (U.S. Patent No. 6,125,838 – hereinafter Hedgpeth). The reasons for the rejection are set forth in the Office Action and therefore not repeated. Applicants traverse this rejection and respectfully request reconsideration.

In the Office Action, at page 6, item 7, the Examiner rejected claims 7 and 19 under 35 U.S.C. §103(a) as being unpatentable over Perkins in view of Hedgpeth, and further in view of Hennick (U.S. Patent No. 5,189,945 – hereinafter Hennick). The reasons for the rejection are set forth in the Office Action and therefore not repeated. Applicants traverse this rejection and respectfully request reconsideration.

In the Office Action, at page 6, item 8, the Examiner rejected claim 8 under 35 U.S.C. §103(a) as being unpatentable over Perkins in view of Hedgpeth, and further in view of UK Patent No. 2 286 111 (hereinafter Makris). The reasons for the rejection are set forth in the

Office Action and therefore not repeated. Applicants traverse this rejection and respectfully request reconsideration.

As a general matter, to establish a prima facie obviousness rejection, the Examiner needs to provide evidence of the existence of individual elements corresponding to the recited limitations, a motivation to combine the individual elements to create the recited invention, and a reasonable expectation of success. (See MPEP, at 2143. – "'[t]he teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, not in applicant's disclosure.' In re Vaeck, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991).", and at 2143.03 – "'[t]o establish *prima facie* obviousness of a claimed invention, all the claim limitations must be taught or suggested by the prior art.' In re Royka, 490 F.2d 981, 180 USPQ 580 (CCPA 1974).").

Should the Examiner fail to provide evidence that the individual elements exist in the prior art, or that the motivation exists in the prior art or in the knowledge generally available to one of ordinary skill in the art, then the Examiner has not provided sufficient evidence to maintain a prima facie obviousness rejection of the claim. (See MPEP, at 2143.03, and 2143.01). Thus, the burden is initially on the Examiner to provide evidence as to why one of ordinary skill in the art would have been motivated to combine the individual elements to create the recited invention, and to demonstrate that this evidence existed in the prior art or in the knowledge generally available to one of ordinary skill in the art. (MPEP 2143.01).

Independent claim 1 recites: "...a cover covering the food, defining a cooking space thereunder, and having an air ventilation structure serving as a primary conduit of air into and out of the cooking space during cooking, when the cover is in a closed position."

And independent claim 9 recites: "...a cover, defining a cooking space between the grill unit and the cover, with an air inlet, serving as a primary inlet of air into the cooking space when the cover is in a closed position, the air inlet being positioned to prevent outside air in the vicinity of the air inlet from being heated by the heating unit, and an air outlet to ventilate the air out of the cooking space when the cover is in the closed position."

Regarding the rejection of independent claims 1 and 9, the Examiner has taken the position that the limitation of the air ventilation structure serving as a primary conduit of air is simply a statement of intended use. Further the Examiner states that if the prior art structure is capable of performing the intended use, then it meets the claim. The Examiner asserts that the cited art, specifically, Perkins, is capable of performing the intended use.

Applicants respectfully disagree.

Perkins discloses a ventilation path through a first embodiment of a cooker in which air flows in via the intake vents 42 and out through the exhaust ports 43, to control the rate of cooking, the amount of smoke exhausted, and the percentage of moisture within the chamber of the invention 11. A tab 44 attached to an inner vent ring 46 is used to adjust air intake via the intake vents 42, and an ear 48 extending from rotatable disk 49 is used to adjust exhaust from exhaust ports 43. (See Perkins, at FIGS. 1 and 3, and col. 4, lines 49-68).

Perkins also discloses an embodiment of a cooker, to which the Examiner points, with a base 58 having intake vents 63 and a cover 62 with exhaust ports 64, which functions similarly to the first embodiment. Air intake is adjusted via a plate 66 with apertures 67 therein. The plate 66 slides along the base to provide a selective degree of registry between the intake vents 63 and the apertures 57. (See Perkins, at FIGS. 4-6, and col. 6, lines 1-13).

Further, the Examiner states "Perkins possibly does not disclose an air ventilation structure to ventilate air into the cooking space that is located on the cover...."

Thus Perkins discloses a single ventilation path: in through the base, and out through the cover. Accordingly, there is no basis in Perkins to support the Examiner's assertion that the exhaust ports 64 are "capable of providing the necessary air, including primary air, to the cooking space."

Additionally, Hedgpeth discloses a grill 20 for use in both mild and windy conditions. The grill 20 has a grill tub 22 with ventilation apertures 45 (shown in FIG. 3) and wind baffles 38-42, each having a series of offset ventilation apertures 47 to create a serpentine flow of air to decrease wind velocity and allow for proper combustion. (See Hedgpeth, at col. 3, lines 18-48). The grill 20 also has a grill hood 24 with ventilation ports 74 to exhaust gasses. Adjacent to the ventilation ports 74, there are slide vent controls 76 to regulate airflow. (See Hedgpeth, at col. 6, lines 49-56).

FIG. 2 of Hedgpeth illustrates the intended airflow through the grill 20. Specifically, air flows into the ventilation apertures 45, and in a serpentine manner, flows through the ventilation apertures 47 of the wind baffles 38-42, past the burner 32, and then out of the grill hood 24 via the ventilation ports 74.

If the ventilation ports 74 located on the grill hood 24 were the primary conduit for incoming air in Hedgpeth, such a configuration would render the primary teaching of Hedgpeth, wind resistant baffles that deflect the flow path of combustion air (See Abstract of Hedgpeth), inoperable.

To the extent that the Examiner believes Perkins or Hedgpeth discloses such a feature based upon personal knowledge, personal knowledge, when used as a basis for a rejection, must be supported by an affidavit as to the specifics of the facts of that knowledge when called for by the applicant. (See, MPEP 2144.03, 37 C.F.R. § 1.104(d)(2)). In short, the rules of the U.S. Patent and Trademark Office require that the Examiner must either support this assertion with an Affidavit, or withdraw the rejection. Therefore, Applicants respectfully request that the Examiner support the rejection with an affidavit, or withdraw the rejections.

Thus, the only disclosed or suggested primary conduit for incoming air in both Perkins and Hedgpeth is their respective bases. Accordingly, Applicants respectfully submit that the structures disclosed in the cited art are not capable of performing the intended use. Thus, Applicants respectfully submit that the limitation of the air ventilation structure serving as a primary conduit of air must necessarily result in a structural difference between the cited art and the invention, as recited in independent claims 1 and 9.

Further still, to combine Perkins and Hedgpeth, the Examiner asserts that the motivation would be to regulate the air intake to desirably control cooking chamber temperature. But, as noted above, Perkins discloses a structure and ventilation path (air flows in via the intake vents 42 and out through the exhaust ports 43) to control the rate of cooking. (See Perkins, at col. 4, lines 49-57). Accordingly, Applicants respectfully submit that one of ordinary skill in the art would not have been motivated to look outside of Perkins to regulate the air intake to desirably control cooking chamber temperature.

Yet further still, the Examiner asserts that Hedgpeth teaches that placement of air intake holes in the cover are preferable to air intake holes located in the base because the base location is understood to potentially cause flame burn out.

But, Applicants respectfully submit that the Examiner appears to be mischaracterizing the teachings of Hedgpeth. As noted above, Hedgpeth teaches that the solution to this problem is a serpentine flow of air to decrease wind velocity and allow for proper combustion. This serpentine flow of air enters via the apertures 45, which are located in the base, and proceeds through the wind baffles 38-42. (See Hedgpeth, at col. 3, lines 18-48).

Thus, even the combination of Perkins, Hedgpeth, and Hennick fails to disclose every element of the claims, arranged as required by the claims.

Accordingly, Applicants respectfully submit that the Examiner has failed to provide evidence that the individual elements exist in the prior art, and thus, the Examiner has not provided sufficient evidence to maintain a prima facie obviousness rejection of the claims

Further, Applicants respectfully submit that that the Examiner has failed to provide evidence that the motivation to combine the references as suggested by the Examiner exists in the prior art or in the knowledge generally available to one of ordinary skill in the art, and thus, the Examiner has not provided sufficient evidence to maintain a prima facie obviousness rejection of the claims.

Amended, independent claim 8 recites: "...a heat-reflecting unit seated adjacent to the grill unit, reflecting heat radiated from the heating unit to the grill unit, having a heat reflecting surface, and containing water therein to prevent materials dropping from the food onto the heat reflecting surface from being burned...."

In Makris, the radiant heater devices are located to "not be affected by liquids and pieces of food dropping through the grid." (Makris p. 3, lines 3-6). Materials dropping from food cooked on the device disclosed in Makris cannot drop onto the reflectors 24. And to orient the reflectors 24 otherwise, would render them inoperable.

Accordingly, Applicants respectfully submit that Perkins, Hedgpeth, or Makris, either alone or in combination, neither disclose nor suggest "...a heat-reflecting unit seated adjacent to the grill unit, reflecting heat radiated from the heating unit to the grill unit, having a heat reflecting surface, and containing water therein to prevent materials dropping from the food onto the heat reflecting surface from being burned...."

Thus, even the combination of Perkins, Hedgpeth, and Makris fails to disclose every element of the claims, arranged as required by the claims.

Accordingly, Applicants respectfully submit that the Examiner has failed to provide evidence that the individual elements exist in the prior art, and thus, the Examiner has not provided sufficient evidence to maintain a prima facie obviousness rejection of the claims.

Thus, Applicants respectfully submit that independent claims 1, 8, and 9 patentably distinguish over the cited art, and should be allowable for at least the above-mentioned reasons. Further, Applicants respectfully submit that claims 2-7, which depend from independent claim 1, and claims 10-17, and 19, which depend from independent claim 9, should be allowable for at least the same reasons as claims 1 and 9, as well as for the additional features recited therein.

CONCLUSION:

In accordance with the foregoing, Applicants respectfully submit that all outstanding objections and rejections have been overcome and/or rendered moot, and further, that all

pending claims patentably distinguish over the cited art. Thus, there being no further outstanding objections or rejections, the application is submitted as being in condition for allowance which action is earnestly solicited.

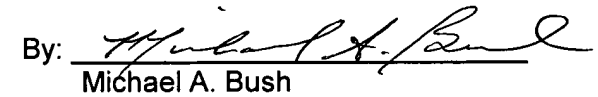
If the Examiner has any remaining issues to be addressed, it is believed that prosecution can be expedited by the Examiner contacting the undersigned attorney for a telephone interview to discuss resolution of such issues.

If there are any underpayments or overpayments of fees associated with the filing of this Amendment, please charge and/or credit the same to our Deposit Account No. 19-3935.

Respectfully submitted,

STAAS & HALSEY LLP

Date: November 9, 2005

By: 

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